

1 HON. JAMES L. ROBART
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7 UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON

9 DeForge Maritime Towing, LLC, a Washington
10 limited liability company,

Plaintiff,

11 vs.
12 Alaska Logistics, LLC; a Washington limited
liability company, and Allyn G. Long,
individually,

Defendants.

IN ADMIRALTY

Case No.: 2:20-cv-01085-JLR

**STIPULATED
PROTECTIVE ORDER**

13 1. PURPOSES AND LIMITATIONS

14 Discovery in this action is likely to involve production of confidential, proprietary, or
15 private information for which special protection may be warranted. Accordingly, the parties
16 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
17 parties acknowledge that this order does not confer blanket protection on all disclosures or
18 responses to discovery, the protection it affords from public disclosure and use extends only to the
19 limited information or items that are entitled to confidential treatment under the applicable legal
20 principles, and it does not presumptively entitle parties to file confidential information under seal.

21 2. "CONFIDENTIAL" MATERIAL.

22 "Confidential" material shall include the following documents and tangible things
23 anticipated to be produced or otherwise exchanged reflecting: the parties' insuring agreements;
underwriters' internal policy and procedure documents, and information as to the parties' income,
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1 expenses, financial performance, costs, financing, and sales as well as similar non-public business
2 documents, the disclosure of which to the public or to existing or potential competitors of the
3 disclosing party could place the disclosing party at a competitive disadvantage and could do
4 damage, monetary or otherwise, to the disclosing party's business. Any party may challenge in
5 court the designation of any particular document or tangible thing as "Confidential" or the types
6 of documents and tangible things listed above as "Confidential."

7 3. SCOPE.

8 The protections conferred by this agreement cover not only confidential material (as defined
9 above), but also (1) any information copied or extracted from confidential material; (2) all copies,
10 excerpts, summaries, or compilations of confidential material; and (3) any testimony,
11 conversations, or presentations by parties or their counsel that might reveal confidential material.
12 However, the protections conferred by this agreement do not cover information that is in the
13 public domain or becomes part of the public domain through trial or otherwise.

14 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL.

15 4.1. Basic Principles. A receiving party may use confidential material that is
16 disclosed or produced by another party or by a non-party in connection with this case only for
17 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
18 disclosed only to the categories of persons and under the conditions described in this agreement.
19 Confidential material must be stored and maintained by a receiving party at a location and in a
20 secure manner that reasonably ensures that access is limited to the persons authorized under this
21 agreement.

22 4.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
23 ordered by the court or permitted in writing by the designating party, a receiving party may
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1 disclose any confidential material only to:

2 (a) the receiving party's counsel of record in this action, as well as employees of
3 counsel to whom it is reasonably necessary to disclose the information for this litigation, including
4 other attorneys in the same law firm of counsel of record;

5 (b) the officers, directors, and employees (including in-house counsel) of the
6 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
7 agree that a particular document or material produced is for Attorney's Eyes Only and is so
8 designated;

9 (c) experts and consultants to whom disclosure is reasonably necessary for this
10 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

11 (d) the court, court personnel, and court reporters and their staff;

12 (e) copy or imaging services retained by counsel to assist in the duplication of
13 confidential material, provided that counsel for the party retaining the copy or imaging service
14 instructs the service not to disclose any confidential material to third parties and to promptly return
15 all originals and copies of any confidential material;

16 (f) during their depositions, non-party witnesses in the action to whom
17 disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to
18 Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.

19 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential
20 material must be separately bound by the court reporter and may not be disclosed to anyone except
21 as permitted under this agreement; and

22 (g) the author or recipient of a document containing the information or a
23 custodian or other person who otherwise possessed or knew the information.

1 4.3. Filing Confidential Material. Before filing confidential material or
 2 discussing or referencing such material in court filings, the filing party shall confer with the
 3 designating party to determine whether the designating party will remove the confidential
 4 designation, whether the document can be redacted, or whether a motion to seal or stipulation and
 5 proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed
 6 and the standards that will be applied when a party seeks permission from the court to file material
 7 under seal

8 5. DESIGNATING PROTECTED MATERIAL.

9 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each
 10 party or non-party that designates information or items for protection under this agreement must
 11 take care to limit any such designation to specific material that qualifies under the appropriate
 12 standards. The designating party must designate for protection only those parts of material,
 13 documents, items, or oral or written communications that qualify, so that other portions of the
 14 material, documents, items, or communications for which protection is not warranted are not
 15 swept unjustifiably within the ambit of this agreement.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 17 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 18 unnecessarily encumber or delay the case development process or to impose unnecessary
 19 expenses and burdens on other parties) expose the designating party to sanctions.

20 If it comes to a designating party's attention that information or items that it
 21 designated for protection do not qualify for protection, the designating party must promptly notify
 22 all other parties that it is withdrawing the mistaken designation.

23 5.2. Manner and Timing of Designations. Except as otherwise provided in
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1 this agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
2 ordered, disclosure or discovery material that qualifies for protection under this agreement must
3 be clearly so designated before or when the material is disclosed or produced.

4 (a) Information in documentary form: (e.g., paper or electronic documents and
5 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
6 the designating party must affix the word “CONFIDENTIAL” to each page that contains
7 confidential material. If only a portion or portions of the material on a page qualifies for protection,
8 the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate
9 markings in the margins).

10 (b) Testimony given in deposition or in other pretrial or trial proceedings:
11 nothing contained in this order shall prevent the use of confidential information as exhibits at
12 depositions or at trial. If confidential documents are used or divulged at depositions, all portions of
13 the transcripts of such depositions and exhibits thereto which relate to such confidential information
14 shall be treated as strictly confidential. For the sake of clarity, the parties shall make efforts to
15 identify on the record, during the deposition, hearing, or other proceeding, all protected testimony.
16 Any party or non-party may also, within twenty-eight days after receiving a deposition transcript,
17 designate portions of the transcript, or exhibits thereto, as confidential.

18 (c) Other tangible items: the producing party must affix in a prominent place on
19 the exterior of the container or containers in which the information or item is stored the word
20 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
21 the producing party, to the extent practicable, shall identify the protected portion(s).

22 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
23 to designate qualified information or items does not, standing alone, waive the designating party’s
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1 right to secure protection under this agreement for such material. Upon timely correction of a
2 designation, the receiving party must make reasonable efforts to ensure that the material is treated
3 in accordance with the provisions of this agreement.

4 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

5 6.1. **Timing of Challenges.** Any party may challenge a designation of
6 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
8 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
9 challenge a confidentiality designation by electing not to mount a challenge promptly after the
10 original designation is disclosed.

11 6.2. **Meet and Confer.** The parties must make every attempt to resolve any dispute
12 regarding confidential designations without court involvement. Any motion regarding
13 confidential designations or for a protective order must include a certification, in the motion or
14 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
15 conference with other affected parties in an effort to resolve the dispute without court action. The
16 certification must list the date, manner, and participants to the conference. A good faith effort to
17 confer requires a face-to-face meeting or a telephone conference.

18 6.3. **Judicial Intervention.** If the parties cannot resolve a challenge without court
19 intervention, the designating party may file and serve a motion to retain confidentiality under
20 FRCP 26 (and in compliance with Local Civil Rule 5(g) if applicable). The burden of persuasion
21 in any such motion shall be on the designating party. Frivolous challenges, and those made for
22 an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other
23 parties) may expose the challenging party to sanctions. All parties shall continue to maintain the
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1 material in question as confidential until the court rules on the challenge.

2 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
3 OTHER LITIGATION.

4 If a party is served with a subpoena or a court order issued in other litigation that compels
5 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party
must:

6 (a) promptly notify the designating party in writing and include a copy of the
7 subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue
9 in the other litigation that some or all of the material covered by the subpoena or order is subject
10 to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by
12 the designating party whose confidential material may be affected.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
15 material to any person or in any circumstance not authorized under this agreement, the receiving
16 party must immediately (a) notify in writing the designating party of the unauthorized
17 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
18 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
19 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
20 Agreement to Be Bound" that is attached hereto as Exhibit A.

21 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
22 PROTECTED MATERIAL.

23 When a producing party gives notice to receiving parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the

1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
2 is not intended to modify whatever procedure may be established in an e-discovery order or
3 agreement that provides for production without prior privilege review. Parties shall confer on an
4 appropriate non-waiver order under Fed. R. Evid. 502.

5 10. NON-TERMINATION AND RETURN OF DOCUMENTS.

6 Within 60 days after the termination of this action, including all appeals, each receiving
7 party must return or destroy all confidential material to the producing party, including all copies,
8 extracts and summaries thereof.

9 Alternatively, the parties may agree upon appropriate methods of destruction.

10 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
11 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
12 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
13 work product, even if such materials contain confidential material.

14 The confidentiality obligations imposed by this agreement shall remain in effect until a
15 designating party agrees otherwise in writing or a court orders otherwise

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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1 Dated: October 26, 2020

2 HOLMES WEDDLE & BARCOTT, PC
3 Attorneys for Plaintiff

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Dated: October 26, 2020

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: October 28, 2020


11 JAMES L. ROBART
12 UNITED STATES DISTRICT JUDGE
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name],
4 of _____ [print or type full address],
5 declare under penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Western District of
7 Washington on the ____ day of _____, 2020, in the case of *DeForge Maritime*
8 *Towing, LLC vs. Alaska Logistics LLC and Allyn G. Long*, Case No. 2:20-cv-01085-JLR.

9 I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
10 and I understand and acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
12 any information or item that is subject to this Stipulated Protective Order to any person or entity
13 except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

17 Date: _____

18 City and State where sworn and signed: _____

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20 Printed name: _____

21 Signature: _____